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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3322 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Order	Court's or Judge's Order

Mr.Vinod Yadav for petitioner.
Mr.Manoj Kadam h/f. Mr.Pratap Patil for respondent.

CORAM : J.H. BHATIA, J.

DATE : 12TH OCTOBER, 2007.

P.C. :-

. Heard the learned counsel for the parties.

2. The petitioner have filed Regular Civil Suit No. 316 of 2004 for removal of encroachment and mandatory injunctions against the defendant. It appears that the suit summons was served on the defendant on 6th July, 2005 and accordingly he appeared on

8th October, 2005. It appears that three short adjournment were granted to him, but he failed to file his statement. On 5th January, 2005 an application for adjournment was made on the ground that the written statement was ready but defendant was not available to sign the same. That application was rejected and order was passed to proceed without written statement. On 26th June, 2005 an application was filed on record to pass an order to proceed without written statement on ground that relevant record was not available. Finding these discrepancies in the application dated 5th January, 2005 and application dated 26th June, 2005 the trial court rejected the application. Therefore, the petitioner has preferred the present petition.

3. After hearing the learned

counsel for both the parties, I am satisfied that it would be in the interest of justice to allow the defendant/petitioner to file written statement because it is not a simple case of injunction but a suit for removal of encroachment and mandatory injunction.

4. Therefore, in the interest of justice, the petition is allowed. The impugned order is hereby set aside. The petitioner/defendant shall file the written statement with the trial court within three weeks from today, failing which the petition shall be deemed to have been dismissed.

(J.H.BHATIA, J)